

Decision 01-06-017 June 14, 2001

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Application of WILLIAM E. FINLEY, d.b.a. BILL FINLEY MOVING SERVICES, to Obtain a Household Goods Carrier Permit Pursuant to Chapter 7 of the Public Utilities Code.

Application 00-11-051  
(Filed November 20, 2000)

**O P I N I O N****Background**

On March 28, 2000, William E. Finley, doing business as Bill Finley Moving Services (Finley, Applicant), requested a Household Goods Carriers Permit. As a result of a criminal records check of William E. Finley, Commission staff discovered that he misrepresented material facts on his application because he did not disclose his criminal history of burglary, driving under the influence of alcohol, or resisting arrest. Finley also did not disclose that as a result of his failure to appear for sentencing, he was subject to an outstanding bench warrant for his arrest at the time he made the application for a permit. On September 1, 2000, Commission staff denied the permit request, and informed Applicant that he could file a formal application with the Commission.

On November 20, 2000, Finley filed a formal application. In his application, Finley stated that his criminal history did not include a felony conviction or crime of moral turpitude. He also stated that his driving under the influence conviction occurred at a time when he was suffering from great personal stress. He also emphasized that no complaints had been filed against him when he operated a moving company from 1987 to 1997.

On December 22, 2000, the Commission's Consumer Services Division (CSD) filed a protest to Finley's application. In its protest, CSD stated that Pub. Util. Code §

5135(e) allows the Commission to refuse to issue a permit if the applicant: (1) has committed any act of dishonesty or fraud, (2) has committed any act which if committed by a permitholder would be grounds for suspension or revocation of the permit, (3) misrepresented a material fact on the application, or (4) committed a felony or a crime involving moral turpitude. CSD concluded that Finley's criminal history, and his statements in the application, demonstrated that Finley had violated each of the four standards. Finley was convicted of burglary, both a felony and an act of dishonesty on February 24, 1981. A driving under the influence (DUI) conviction is sufficient grounds to suspend or revoke a permit. His DUI conviction occurred on May 29, 1999. On his application, Finley stated that he had committed no criminal acts that would disqualify his application under Section 5135(e), which is a material misrepresentation. CSD concluded its protest by noting that there appeared to be few disputed issues of material fact, so evidentiary hearings should not be necessary.

On January 8, 2001, the assigned Administrative Law Judge (ALJ) issued a ruling stating that the basic facts at issue in the application do not appear to be in dispute and suggesting that evidentiary hearings did not seem to be required. The ALJ ruling, however, gave applicant an opportunity to file a statement regarding the need for hearings, and evidence that the applicant would present at any such hearing. The ruling also warned that failure to submit the statement would result in the record in this proceeding being closed immediately, and the case submitted for Commission decision on the record of the application and the CSD's protest only.

Despite an extension of time in which to file, applicant did not make the required filing.

### **Need for a Hearing**

Based on the record, we conclude that a public hearing is not necessary. As no hearing is required, and pursuant to Rule 6.6 of the Commission's Rules of Practice and Procedure (Rules), Article 2.5 of the Rules ceases to apply to this proceeding.

### **Discussion**

Pursuant to Pub. Util. Code § 5135, this Commission may refuse to issue a Household Goods Carrier permit “if it can be shown that an applicant . . . has committed any act constituting dishonesty or fraud; committed any act which, if committed by a permitholder would be grounds for suspension or revocation of the permit; misrepresented any material fact on his application; or, committed a felony, or an act of moral turpitude.”

CSD has presented credible evidence that this applicant: (1) was convicted of burglary, both a felony and an act of dishonesty, (2) was also convicted of driving under the influence conviction, which is sufficient grounds to suspend or revoke a permit, and (3) stated on his application to this Commission that he had committed no criminal acts that would disqualify his application under Pub. Util. Code § 5135(e), which is a material misrepresentation.

Applicant has presented no evidence disputing CSD’s allegations. Applicant has stated that his criminal convictions occurred in his youth, that his driving under the influence violation was an isolated event brought about by great personal stress, and that no complaints were lodged against him when he operated a moving company. However, Applicant has not attempted to excuse or justify his material misrepresentation of fact in his application where he denied having such violations.

While we are sympathetic with the desire of applicant to conduct his business, operating as Household Goods Carrier necessarily requires strict compliance with traffic safety requirements, as well as the highest standard of trustworthiness for protection of the goods entrusted by the public. CSD has presented essentially unrefuted evidence that this carrier does not meet these standards.

Therefore, we find that the CSD reports contained in the record of this proceeding show that applicant has committed one or more of the grounds set out in Pub. Util. Code § 5135 upon which we may refuse to issue a Household Goods Carrier permit. Based on this record, and pursuant to Pub. Util. Code § 5135, we refuse to issue a Household Goods Carrier permit to William E. Finley, dba Bill Finley Moving Services.

The draft decision of Administrative Law Judge Bushey in this matter was mailed to the parties in accordance with Pub. Util. Code § 311(g)(1) and Rule 77.7 of the Rules of Practice and Procedure. No comments were received.

### **Findings of Fact**

1. Applicant presented no justification for hearings despite directions from the ALJ to do so.
2. No hearing is necessary.
3. CSD has presented credible and uncontested evidence that this applicant was convicted of burglary and of driving under the influence, and that he also stated on his application to this Commission that he had committed no criminal acts that would disqualify his application under Section 5135(e).

### **Conclusions of Law**

1. Article 2.5 of the Rules ceases to apply to this proceeding.
2. CSD has met its burden of proving that the applicant has committed one or more of the grounds set out in Pub. Util. Code § 5135 upon which we may refuse to issue a Household Goods Carrier permit.
3. This Commission should refuse to issue a Household Goods Carrier Permit to this William E. Finley, dba Bill Finley Moving Services.
4. This application should be denied, effective immediately.
5. This proceeding is closed.

## **O R D E R**

### **IT IS ORDERED** that:

1. The application for a Household Goods Carrier Permit of William E. Finley, dba Bill Finley Moving Services, is denied.
2. This proceeding is closed.

This order is effective today.

Dated June 14, 2001, at San Francisco, California.

LORETTA M. LYNCH  
President  
HENRY M. DUQUE  
RICHARD A. BILAS  
GEOFFREY F. BROWN  
Commissioners

Commissioner Carl W. Wood, being necessarily  
absent, did not participate.